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Attorneys for Plaintiff Deborah Feingold

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
DEBORAH FEINGOLD D/B/A	:	Civil Case No. 1:18-cv-2055
DEBORAH FEINGOLD PHOTOGRAPHY	:	
	:	
Plaintiff,	:	
-against-	:	
	:	
RAGEON, INC., JOHN DOES 1-7	:	
	:	
Defendants.	:	
-----X		

**DECLARATION OF CHRIS J. FLADGATE IN SUPPORT OF PROPOSED
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

CHRIS J. FLADGATE, an attorney duly admitted to practice law before the State and Federal Courts of New York, hereby declares pursuant to 28 U.S.C. § 1746 the following:

1. I am a member of the firm Garson, Ségal, Steinmetz, Fladgate LLP, attorney of record for Plaintiff, Deborah Feingold d/b/a Deborah Feingold Photography ("Plaintiff" or "Feingold"), in this action. I am fully familiar with the facts and circumstances stated forming the basis of the Proposed Temporary Restraining Order and Order to Show Cause and respectfully submit this declaration in support of the Proposed Temporary Restraining Order and Order to Show Cause.

2. On March 8, 2018, Plaintiff filed the Summons and Complaint in this matter. The matter is, essentially, a routine copyright infringement dispute.

3. Plaintiff is a well known and prominent photographer and RageOn operates a website that allows people to order clothing, such as t-shirts, with any image (as selected by the user) to be printed on the clothing.

4. On or about April 6, 2018, RageOn was served with the Summons and Complaint via its agent. On Tuesday of this week (April 10), the RageOn's CEO, Michael ("Mike") Krilivsky called me directly to discuss the matter. The call lasted approximately two minutes and, as I was on vacation at the time, I asked Mr. Krilivsky to send me an email detailing what he wanted to discuss with me.

5. This call was my first interaction my Mr. Krilivsky, who was unknown to me prior to this point.

6. Later on Tuesday, Mr. Krilivsky sent me such an email which, *inter alia*, contained an offer of settlement. This email threatened that, if my client did not settle the matter, RageOn would then consider such action to constitute extortion and fraud.

7. Yesterday (April 12), I returned to the office from vacation and, having consulted with my client, sent Mr. Krilivsky a short email rejecting RageOn's offer of settlement and suggested he consult with an attorney.

8. Again, yesterday, Mr. Krilivsky responded to my email, generally reiterating his earlier thoughts and repeating his earlier offer of settlement. His email, again, made threats if my client did not accept his offer. This time, he threatened to sue for extortion, accused me of bullying and being both unethical and fraudulent. Mr. Krilivsky also asserted that he "always follow[s his] built in ethical, moral compass and play[s] within the rules."

8. I consulted with my client and, via a short perfunctory email, informed Mr. Krilivsky that his offer was, again, rejected.

9. Mr. Krilivsky then sent a final email yesterday after I had left the office. The email accused me (again) of bullying behavior and, shockingly and outrageously, concluded with an image of my six year old daughter displayed on a RageOn garment.

10. The photo of my daughter was taken in October 2015 and, I believe, could only have been sourced by Mr. Krilivsky scouring social media platforms. No comment or explanation was made by Mr. Krilivsky as to why he decided to include a photo of my daughter in his email. (The full email thread, with some redactions, is attached hereto as **Exhibit A.**)

11. Given I do not know Mr. Krilivsky (other than as specified above) and the repeated aggressive and threatening tenor of his communications, I cannot perceive his inclusion of the photo in his final email as anything other than a threat either to me or my family. In any event, this goes well beyond the bounds of normal, or even acceptable, behavior.

12. Having consulted with my client last night and this morning on this matter, she now perceives Mr. Krilivsky as a threat to her.

13. Accordingly, I respectfully request that this Court issue an order of protection governing future modes of communication from RageOn to Plaintiff, myself, my family and my law firm.

14. As a result of Mr. Krilivsky's email, I have had to consult with my partners at Garson, Segal, Steinmetz, Fladgate LLP, my client and my wife. Ignoring the emotional and mental burden caused by his email, there is a cost to making this application before this Court and this is a cost that should not be borne by Plaintiff or my law firm, who are both blameless.

15. Accordingly, I respectfully request that the Court sanction RageOn in the modest amount of \$1,500 to cover the costs of this application.

16. Finally, pursuant to FRCP Rule 65(b)(1), this Court is expressly empowered to issue a temporary restraining order without notice to RageOn upon (a) a showing of immediate and irreparable injury, loss or damage and (b) a certification of any efforts made to give notice and reasons why notice should be waived.

(a) In relation to a showing of immediate and irreparable injury, loss or damage, I attach a Declaration in my name. In short, as I do not know Mr. Krilivsky and cannot assess the threat made by him against my family and myself, there is a sense of both immediate and irreparable injury, loss and damage. Having consulted with Plaintiff, she feels the same way (even though no threat has been made directly against her).

(b) In relation to notice, I have made no further communications to Mr. Krilivsky after his final email of yesterday. I believe any prior notice to him will undermine the very purpose of this application, which is to put in place a protective order expeditiously for the protection of Plaintiff, myself, my family and my law firm. Accordingly, I believe that notice should not be required in this matter.

17. I thank the Court for its consideration of this matter.


Dated: April 13, 2018
New York, New York

GARSON, SEGAL,
STEINMETZ, FLADGATE LLP
Attorneys for Plaintiff

By: 

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Exhibit A

From: Mike Krilivsky <mike@rageon.com> 
Subject: Re: Notice of Service of Process - Transmittal Number: 18007136
Date: April 12, 2018 5:23:36 PM EDT
To: Chris Fladgate <cf@gs2law.com>
Cc: SOP <sop@cscglobal.com>, Andrea Timpone <at@gs2law.com>

1 Attachment, 502 KB

Hi Chris, thanks for your email too.

Our mission is to empower the creators of the world and won't be bullied by you or your firm.

I expect that you'll drop this before we waste time and money filing a response as it will only increase your debt.



Mike Krilivsky
CEO & Co-Founder at RageOn!

RageOn.com





★ [How RageOn App works in 30 seconds!](#) ★

RageOn helps over 600k brands like [Hello Kitty](#), [KISS](#), [Lisa Frank](#), and [Sausage Party](#) to [revolutionize retail](#), achieve [instant distribution](#), and [fight piracy](#)!

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On Thu, Apr 12, 2018 at 1:21 PM, Chris Fladgate <cf@gs2law.com> wrote:

Hi Mike,

Thank you for your email. Your offer is rejected.

Regards,
Chris

On Thu, Apr 12, 2018 at 3:53 PM, Mike Krilivsky <mike@rageon.com> wrote:

Hi Chris, I've tried calling you and texting you to discuss.

I've been advised to pay you nothing and sue for damages and extortion if you proceed with this bogus case.

For clarity purposes, I will summarize:

- RageOn has not uploaded any of your clients IP
- There have been no violations of DMCA law
- Zazzle case has been brought to your attention where UGC marketplace was not liable unless item was sold
- There have been no sales w/ your clients IP
- If you continue, I will countersue for attorney's fees, damages, and whatever I possibly can since you're completely wasting the US and State's time, my time, and money

Due to the facts presented to you, I see no other reason why you would continue to push for me ethically or legally unless it was to exploit a legal loophole and leverage of the costs of litigation to try and bully me into a larger settlement. On that principle alone, what you're doing has no merit, is unethical, and is now fraudulent.

My background

I have 20+ years of legal and IP experience with merchandise in several different industries including, but not limited to - previous record labels, dance party company, clothing brand, marketplace and tech... I'm a Trademark owner, Patent Co-Author, and have had hundreds of hours of legal discussions, mentoring, and training on this topic and similar topics.

I have been on both sides of litigation, arbitration, have won and settled successfully every time, even against multi-million to billion dollar companies (some, not all, Hot Topic, Zumiez, CR3W, and small guys) because I always follow my built in ethical, moral compass and play within the rules.

I'm stating my credentials above so you don't waste more time on trying to extort RageOn.

Ultimately, I will protect my rights, spend as much money as needed to make an example out of you and your company with intention that a judge/jury will see the correspondence and evidence and make you pay damages and recoup all fees.

Last chance to accept this courteous donation of good faith.



Mike Krilivsky
CEO & Co-Founder at RageOn!

RageOn.com



★ [How RageOn App works in 30 seconds!](#) ★

RageOn helps over 600k brands like [KISS](#), [Lisa Frank](#), [Sausage Party](#), and [Hello Kitty](#) to [revolutionize retail](#), achieve [instant distribution](#), and [fight piracy](#)!

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On Thu, Apr 12, 2018 at 7:49 AM, Chris Fladgate <cf@gs2law.com> wrote:

Hi Mike,

Your offer is rejected. I believe that RageOn has been validly served, but you should consult an attorney.

Regards,
Chris

Chris Fladgate
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On Apr 10, 2018, at 2:39 PM, Mike Krilivsky wrote:

Chris, see below

On Tue, Apr 10, 2018 at 11:27 AM, SOP <sop@cscglobal.com> wrote:

Good Afternoon Mike,

Your email has reached CSC, how may I assist you?

Chris Fladgate's, the sender of the service, email address is cf@gs2law.com.

Thank you,

Nicole Chambers

Customer Service Partner | Litigation Management Services

Office: 1 800 927 9801

sop@cscglobal.com

CSC®

cscglobal.com



We are the business behind business

----- Original Message -----

From: Mike Krilivsky [mike@rageon.com]

Sent: 4/10/2018 11:08 AM

To: sop@cscinfo.com

Subject: Re: Notice of Service of Process - Transmittal Number: 18007136

Hi Chris,

Thanks for picking up my call and sorry to disturb you on your vacation. I double checked and according to my records, it looks like we have not been legally served yet.

You may not know this, but RageOn is actually leading an intellectual property revolution in the UGC marketplace space and here's our white paper: [Turning IP Into Profit](#). We go above and beyond to protect IP, moreso than any existing UGC platform! We are very much aligned with your firm's incentives with supporting artists, photographers, musicians, etc. on a daily basis!

According to my records, someone asked for these images to be removed from our UGC marketplace some time ago, they were removed and, as a courtesy to you, we looked up the accounts that you listed and none were sold. This is actually very common for non-verified accounts as they aren't promoted and don't show up as frequently as the verified artists that we work with.

Worth noting, in most recent cases, one being Zazzle, dictate that uploaded images to UGC marketplaces are not awarded damages when the marketplace is compliant, as we were, considering that we obliged to your request and follow DMCA law.

Obviously, we'd be happy to defend ourselves in this situation, fight for our rights and justice, and then recoup our attorney's fees and my time. We would win because we've acted within the law, given you honest feedback, and have been 100% compliant all around.

If you pursue, I will pass this off to an attorney to defend then make sure to recoup attorney's fees in any type of settlement or final litigation determination. This is your best and final offer.

Sorry we aren't a big money maker for you, but at least we can help protect and serve IP owners rights across the internet with you!

Please let us know if you accept in the next 48 hours. If you accept, we will wrap up this week, if not, you will have forced us to spend more time and hire more resources that we will, in fact, recoup from you. You have been warned that there have been no sales and that we have been compliant, so we will view this as extortion, fraud, and make a case as to how this is a bad use of the US Judicial systems' time and resources - as you've been warned clearly that there is not an actual violation.

I hope to hear from you soon and hope that you have a great rest of vacation.



Mike Krilivsky
CEO & Co-founder, RageOn!

RageOn.com



★ [How RageOn App works in 30 Seconds!](#)

RageOn helps over 500k brands like [KISS](#), [Lisa Frank](#), [Sausage Party](#), and [Hello Kitty](#) to [revolutionize retail](#), achieve [instant distribution](#), and [fight piracy](#)!

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On Mon, Apr 9, 2018 at 8:41 AM, <sop@cscinfo.com> wrote:



NOTICE OF SERVICE OF PROCESS

Transmittal Number: [18007136](#)

(Click the Transmittal Number to view your SOP)

Pursuant to client instructions, we are forwarding this summary and Notice of Service of Process.

Entity:	RageOn, Inc.
Entity I.D. Number:	3481903
Entity Served:	RageOn, Inc.
Title of Action:	Deborah Feingold d/b/a Deborah Feingold Photography vs. RageOn, Inc.
Document(s) type:	Summons/Complaint
Nature of Action:	Trademark / Copyright / Patent
Court/Agency:	U.S. District Court Southern District, New York
Case/Reference No:	1:18-cv-2055
Jurisdiction Served:	Delaware
Date Served on CSC:	04/06/2018
Answer or Appearance Due:	21 Days
Originally Served On:	CSC
How Served:	Personal Service

Sender Information:

Chris J. Fladgate
212-380-3623

Primary Contact:

Michael Krilivsky
RageOn, Inc.

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the document(s) and taking appropriate action.

[251 Little Falls Drive, Wilmington, Delaware 19808-1674](#)
(888) 690-2882 | sop@cscglobal.com

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